IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
       Solomon, et al.)
)   Examiner: Abraham, Esaw T.

Application No: 10/041,040)

Art Unit: 2133

Filed: December 28, 2001)

For: Method and Apparatus for Signaling)
     an Error Condition to an Agent not)
     Expecting a Completion)

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Panel:

In response to the Final Office Action of August 17, 2005 ("the Action"), please consider

the following pre-appeal brief request for review.

Application No. 10/041,040 – Pre-Appeal Brief Request for Review
Atty. Docket No. P13767   -1-   Examiner Abraham
                                                       Art Unit 2133

All pending claims stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Doiron (US Patent 5,968,197). During prosecution, Applicants have consistently argued that the Examiner has failed to establish that Dorian discloses all claim elements recited in the independent claims 1, 7, 13 and 18 as needed to maintain a *prima facie* §102(b) rejection.

Claim 1, as previously amended, states:

> An apparatus to communicate on a point-to-point communication link, the apparatus comprising:
> a data path input unit to receive a packet on the point-to-point communication link from *a transmitting device that does not expect an acknowledgement of a successful or unsuccessful completion for a request transaction*; and
> a data path output unit to transmit a message to the transmitting device if the request transaction is unsuccessful.

Emphasis added.

The Examiner has not shown that Doiron, either expressly or inherently describes the above emphasized elements of claim 1. Dorian describes a sender and a receiver that use an automatic repeat request (ARQ) protocol to include acknowledge (ACK) and negative acknowledge (NAK) signals from the receiver to the sender. The signals are to indicate if a data packet is received correctly (ACK) or incorrectly (NAK). See Column 1 lines 55-67 and Column 2 lines 1-10. Dorian goes on to describe that the *sender expects* either an ACK or a NAK signal within an "ACK/NAK transmission timing window..." See Column 2, lines 8-10 and Column 8, lines 28-37.

Since Dorian describes the *sender expecting an acknowledgement* from the receiver within an ACK/NAK transmission timing window, Dorian does not expressly describe the above emphasized elements of claim 1. Further, the ACK/NAK transmission timing window stresses the importance to the sender of *receiving some kind of acknowledgment (ACK or NAK)*. As a result, contrary to the Examiner's statement of inherency (see Action, pages 3-4), Dorian actually

teaches away from the above emphasized elements of claim 1. Thus, the Examiner has failed to show how Dorian supports a *prima facie* case of anticipation and Applicants request that the 35 U.S.C. § 102(b) rejection of claim 1 be withdrawn.

Independent claims 7, 13 and 18 also include similar elements to the emphasized portions of claim 1. Additionally, claims 2-6, 8-12, 15, 16 and 19-24 depend from one of independent claims 1, 7, 13 and 18.

Conclusion

In conclusion, Applicants maintain that the Examiner has failed to maintain a *prima facie* rejection under §102(b) and thus allowance of all pending claims is requested.

Respectfully submitted,
Gary Solomon, et al.

Date: ___11\17\05____   by:_____
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